LAW OFFICES

WATKISS & CAMPBELL

A PROFESSIONAL CORPORATION

TWELFTH FLOOR

310 SOUTH MAIN STREET

SALT LAKE CITY, UTAH 84101-2171

DAVID K[redacted]ISS
ROBERT [redacted]AMPBELL, JR.
JAMES P. COWLEY
HERSCHEL J. SAPERSTEIN
H. WAYNE WADSWORTH
WILLIAM VOGEL
PHILIP C. PUGSLEY
GLEN E. DAVIES
ROBERT D. MAACK
MICHAEL F. HEYREND
GREGORY B. MONSON
ALLAN T. BRINKERHOFF
WESTON L. HARRIS
E. BARNEY GESAS
LANGDON T. OWEN, JR.
DAVID B. WATKISS
KAREN C. JENSON
ELIZABETH T. DUNNING
VERNON L. HOPKINSON
D. RANDALL TRUEBLOOD
VINCENT C. RAMPTON
JOSEPH T. DUNBECK, JR.
THOMAS P. MELLOY
TRACY H. FOWLER
R. L. KNUTH
DENNIS J. CONROY
STEVEN T. WATERMAN
KEN P. JONES
DEBRA J. MOORE
CASS C. BUTLER
H. DICKSON BURTON
DANIEL J. TORKELSON
KEVIN R. ANDERSON
JOHN L. BLACK, JR.
MARTIN R. DENNEY
CAROLYN COX
MARCO B. KUNZ
WILLIAM H. CHRISTENSEN
CASEY K. McGARVEY
MARY T. NOONAN
C. SCOTT BROWN
LESLIE J. RANDOLPH
BRETT F. WOOD

OF COUNSEL
ZAR E. HAYES
RICHARD B. FERRARI
FRANKLIN N. SMITH, JR.

TELEPHONE
(801) 363-3300

TELECOPIER
(801) 350-3892

WRITER'S DIRECT NUMBER:

87 DEC 11 A11

PUBLIC SERVICE COMMISSION

December 11, 1987

Public Service Commission of Utah
Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84145-0801

Re: PacifiCorp-Utah Power & Light Merger Case, Docket No. 87-035-27

Mr. Chairman and Commissioners:

Enclosed is a copy of the procedural order entered this past day by the FERC in the UP&L-PacifiCorp merger case granting an expedited hearing, permitting interventions and otherwise ruling on interlocutory motions.

The ruling and accompanying rationale of the Order begins on page 20 with the first 19½ pages being devoted to recital of the positions of the applicants and intervenors.

A copy of this letter is being sent to all counsel of record along with a copy of the Order to those parties who are not also parties in the FERC proceeding.

Sincerely,

Robert S. Campbell

ROBERT S. CAMPBELL, JR.
Counsel for PacifiCorp

RSC/dd
enclosure

cc: All counsel of record

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ELECTRIC RATES: Merger; Hearing

Before Commissioners: Martha O. Hesse, Chairman;
Anthony G. Sousa, Charles G. Stalon,
Charles A. Trabandt and C. M. Naeve.

Utah Power & Light Company PacifiCorp PC/UP&L Merging Corporation	)	Docket No. EC88-1-000

ORDER ESTABLISHING HEARING PROCEDURES, GRANTING INTERVENTIONS, GRANTING IN PART REQUEST FOR LEAVE TO ANSWER PROTESTS, GRANTING IN PART REQUEST FOR EXPEDITED HEARING, AND DENYING MOTIONS TO STRIKE

(Issued December 10, 1987)

On October 5, 1987, Utah Power & Light Company (UP&L), PacifiCorp (PacifiCorp Maine) and PC/UP&L Merging Corporation (PacifiCorp Oregon) (collectively referred to as Applicants) filed a joint application under section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1982), seeking approval of a proposed merger. The applicants have requested expedited consideration in order that the merger can be consummated on the earliest possible date. 1/

Notice of the application was published in the Federal Register, 2/ with comments, protests or motions to intervene due on or before November 2, 1987.

Background

Pursuant to an agreement and plan of reorganization and merger (merger agreement) dated August 12, 1987, the applicants propose to merge PacifiCorp Maine and UP&L into PacifiCorp Oregon (to be renamed PacifiCorp upon completion of the merger) with PacifiCorp Oregon to be the surviving corporation. The merger agreement provides that the capital stock of UP&L and PacifiCorp

---

1/ Applicants seek a decision by August, 1988.

2/ 52 Fed. Reg. 43,150 (1987).

Maine shall be converted into shares of the capital stock of PacifiCorp Oregon. 1/

All facilities, including operating facilities, of PacifiCorp Maine and UP&L will be merged into PacifiCorp Oregon. The applicants state that the use of the facilities following the proposed merger will be the same as their present use. Under the merger agreement, PacifiCorp Oregon will assume and perform all contracts and commitments to which UP&L and PacifiCorp Maine are parties.

The joint application discloses the following:

Utah Power & Light Company

UP&L is engaged principally in the business of generating and selling electric energy in Utah, southeastern Idaho and southwestern Wyoming. UP&L's electric service area of approximately 90,000 square miles contains approximately 510,000 retail customers. UP&L serves Salt Lake City, West Valley, and Ogden, Utah and over 400 other cities and towns at retail and serves numerous municipalities and electric associations at wholesale. The Company sells surplus power and energy to other utilities. The applicants state that PacifiCorp Oregon will conduct the same general business when the transaction is consummated, under the assumed business name of Utah Power & Light Company.

UP&L's transmission system is comprised of 7,788 miles of transmission lines. The Company utilizes its facilities generally to supply electric services within its service area and to sell electric energy at wholesale pursuant to contracts and rate schedules on file with the Commission. The Company also uses its transmission lines to transmit electric energy in interstate commerce.

1/ All outstanding shares of PacifiCorp Maine common stock and preferred stock are to be converted into an equal number of shares of PacifiCorp Oregon common stock and preferred stock, respectively. All outstanding shares of UP&L common stock are to be converted into a certain number of shares of PacifiCorp Oregon common stock pursuant to a formula in the merger agreement. The conversion ratio is dependant upon the average closing price of PacifiCorp Maine common stock as listed on the New York Stock Exchange just prior to the consummation of the merger. All outstanding shares of UP&L preferred stock are to be converted into an equal number of shares of PacifiCorp Oregon preferred stock.

UP&L is interconnected by high-voltage transmission lines to 18 adjacent major power systems. UP&L is a member of the Northwest Power Pool and is a party to the Intercompany Pool Agreement with seven Northwest utilities. UP&L is also connected to other power pools within the region of the Western Systems Coordinating Council.

PacifiCorp Maine

PacifiCorp Maine is a diversified corporation doing business as Pacific Power & Light Company (PP&L). PP&L is engaged in generating and selling electric energy in California, Idaho, Montana, Oregon, Washington and Wyoming. PP&L's electric service area of approximately 63,000 square miles contains approximately 670,000 retail customers. PP&L serves over 240 cities and towns at retail and wholesale. The Company sells surplus power and energy to other utilities. The applicants state that PacifiCorp Oregon will conduct the same general business when the transaction is consummated, under the assumed business name of Pacific Power & Light Company.

PP&L owns and operates approximately 20,600 miles of transmission lines and is interconnected with the systems of other utilities in California, Montana, Oregon, Washington and Wyoming. PP&L is a member of the Northwest Power Pool and is a party to the Intercompany Pool Agreement with seven Northwest utilities. It is interconnected with UP&L at UP&L's Naughton Plant near Kemmerer, Wyoming. PP&L sells electric energy at wholesale in interstate commerce and transmits electric energy in interstate commerce.

PacifiCorp Oregon

PacifiCorp Oregon was incorporated for the purpose of effectuating the proposed merger. As a result of the merger, if approved, PacifiCorp Oregon will provide electric service to more than 1,180,000 retail customers throughout California, Idaho, Montana, Oregon, Utah, Washington and Wyoming. Its electric service territory will aggregate approximately 153,000 square miles.

Applicants' Statement With Regard to the Public Interest

Applicants state that the proposed merger will promote the public interest and benefit customers of UP&L and PacifiCorp Maine by integrating the electric utility properties now separately owned and operated. They argue that because PacifiCorp Maine is a winter-peaking utility and UP&L is a summer-peaking utility, the consolidation will provide opportunities for more efficient use of power resources. This, they assert, will enhance the reliability of service and postpone the need for costly addition of resources and will enhance the

prospects of wholesale power sales to the southwestern United States.

Applicants state that they anticipate that the consolidation of resources and operations and the economies of scale derived from the merger will allow the elimination of overlapping functions and result in future operating savings. Future operating savings also are expected through the consolidation of inventories, increased flexibility in scheduling maintenance of generation plants, and shared services between the operating divisions.

The Applicants further assert that the merger would present an opportunity for increased operating efficiencies by virtue of existing generating capacity, technical expertise and other resources. PacifiCorp Maine currently obtains approximately 30% of its power from hydroelectric generation and the remainder through coal-fired generation. UP&L currently generates 92% of its electricity at coal-fired plants and owns several coal properties. The Applicants expect that the availability of PacifiCorp Maine's surplus power may also enable the UP&L division to delay construction of a new power plant, thereby deferring, and possibly eliminating, costly construction expenditures. The Applicants also expect that the benefits to be obtained will help to stabilize rates and result in the development of a less expensive and more efficient electrical system.

Finally, the Applicants state that PacifiCorp Oregon, as the surviving corporation, will be both larger and financially stronger than either company operating separately. Accordingly, the Applicants assert that the merged company will be in a stronger position to finance the acquisition or construction of facilities on more advantageous terms.

The Intervenors

Twenty-one notices of intervention or motions to intervene have been filed. A short discussion of each follows.

1. Colorado River Energy Distributors Association

On October 30, 1987, the Colorado River Energy Distributors Association (CREDA) 4/ filed a motion to intervene, protest and request for hearing.

4/ CREDA is a non-profit corporation consisting of 117 electric systems serving customers in the states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.

CREDA raises a number of concerns in regard to the proposed merger and requests that, as a result of the complexity of the proposed merger and its potential consequences, the Commission order a hearing on the issues raised in its motion.

CREDA argues that the proposed merger would have a significant anticompetitive effect in that it would produce a significant added concentration of economic power and substantially reduce competition among intermountain electric utilities. CREDA alleges that changes in the combined UP&L/PP&L transmission system will have a major impact on the operation and planning of CREDA's members since such members are heavily dependent on the transmission systems of PP&L and UP&L for the delivery and stability of their current and future power supplies.

CREDA asserts that the proposed merger will not tend towards the development of an integrated public utility system, as set forth in section 10(c)(2) of the Public Utility Holding Company Act of 1935 (PUHCA), 15 U.S.C. § 79j(c)(2) (1982). 5/ In this regard, CREDA argues that: (1) as a result of the merger, both PP&L and UP&L would expand their service territories and transmission networks into another region, thereby violating the integrated public utility concept; (2) UP&L already has an integrated electric system and while there is a question as to whether PP&L's system is currently integrated, the merger will not tend toward development of an integrated system for PP&L -- that is, neither UP&L nor PP&L will acquire through the merger the ability to fully interconnect and efficiently operate its assets without reliance on transmission outside of system

---

5/ An "integrated public utility-system" is defined as

> . . . a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation. . . .

15 U.S.C. § 79b(a)(29)(A) (1982).

control; (3) as a result of the merger, the bulk power sales and wheeling transactions between UP&L and PP&L would be insulated from competition and regulation; and (4) the advantages of local management, efficient operation, and the effectiveness of regulation would be impaired as to the merged utility.

CREDA argues that meaningful regulation by state commissions will be rendered extremely difficult over the merged utility, with operations spread across seven states and with affiliates in three different industries. 6/ This corporate structure, CREDA argues, also creates the potential for misallocation of costs and revenues among different classes of ratepayers and abuses such as diversion of funds away from operating purposes.

CREDA also asserts that a 2% reduction in UP&L's retail rates (as announced by the Applicants, to take effect immediately upon consummation of the merger) may result in a reduction in earnings for UP&L. This, together with PacifiCorp Maine's weaker financial rating, argues CREDA, may result in a deterioration in UP&L's financial condition, thereby causing an increase in its cost of capital.

Finally, CREDA asserts that the merger is not consistent with the interests of the shareholders of UP&L and PacifiCorp Maine in that: (1) UP&L may have rejected a higher offer for its common stock from another utility in order to accept PacifiCorp Maine's offer; (2) due to the anticipated effect of the merger on the number of outstanding shares, the price of PacifiCorp Maine's stock fell in response to the announcement of the merger agreement; (3) as a result of the merger, UP&L common stock will be transformed from shares in an operating electric utility, with a largely guaranteed rate of return and "safe" dividend, into shares in a diversified corporation which earned only 57% of its 1986 net income from electric operations; and (4) the shareholders would not have the protection of regulation under PUHCA for their investment in PacifiCorp Oregon.

2. Deseret Generation & Transmission Cooperative

On November 2, 1987, Deseret Generation & Transmission

6/ CREDA states that PacifiCorp Maine is a diversified corporation with approximately 118 directly and indirectly controlled subsidiaries operating across the country in three industry segments other than the electric utility industry: telecommunications, mining and resource development, and commercial financial services.

Cooperative (Deseret) filed a motion to intervene. 7/ Deseret describes itself as a competitor of UP&L and PP&L for sales of excess capacity and energy to other utilities in the western United States. Deseret's bulk sales transactions with utilities not directly interconnected to its transmission system, states Deseret, are limited by the availability of transmission capacity on other utilities' systems, including UP&L and PP&L. Deseret states that its primary interest in this proceeding is to determine the effect of the merger on Deseret's access to wheeling facilities for the purpose of competing in bulk sales transactions.

Deseret's position is that: (1) it would not be in the public interest to allow temporary conditions which may enable the surviving company to lower power rates, thereby eliminating long-term competition from a major power marketing area such as that involved in this proceeding; and (2) the proposed merger could effectively bar Deseret from the use of essential facilities to be controlled by PacifiCorp Oregon that are necessary for Deseret to compete in bulk power markets.

Deseret also asserts that the magnitude and complexity of PacifiCorp Oregon operating within multiple state boundaries may make effective regulation difficult, if not impossible, and could result in monopolistic practices that can not be effectively regulated by the various state regulatory commissions.

3. National Rural Electric Cooperative Association, et al.

On November 2, 1987, the National Rural Electric Cooperative Association (NRECA), the American Public Power Association (APPA), and six regional associations (collectively referred to

---

7/ Deseret is a non-profit electric generation and transmission cooperative association consisting of six members: Bridger Valley Electric Association; Dixie-Escalante Rural Electric Association; Flowell Electric Association, Inc.; Garkane Power Association; Moon Lake Electric Association, Inc.; and Mt. Wheeler Power, Inc. The members are rural electric distribution cooperatives that sell electricity at retail to their approximately 30,000 member-customers in Utah, eastern Nevada, northern Arizona, northwestern Colorado and southwestern Wyoming.

as NRECA, et al.) 8/ jointly filed a protest and motion to intervene.

NRECA, et al. argue that the proposed merger would not be in the public interest in that: (1) it would have a substantial and adverse impact on the competitive situation in the electric utility industry in the western United States; (2) the resulting entity would control the vital transmission paths and generation in seven states, with the ability to control major power transactions in states outside the area; and (3) regulatory control over transmission will be diminished.

NRECA, et al. assert that if the merger is approved, it should be conditioned pursuant to authority under section 203, so that the resulting company operates its system in a manner which is procompetitive and which meets the other requirements of the public interest standard. This might include conditioning the merger upon: (1) open access to the transmission system to be controlled by PacifiCorp Oregon at just and reasonable rates; and (2) increasing transmission capacity on existing lines and over existing rights-of-way, if required by wheeling customers, with appropriate compensation for such construction being determined by the Commission under the just and reasonable standard.

It is alleged by NRECA, et al. that both UP&L and PP&L have a history of anticompetitive behavior. Accordingly, they request that a hearing be ordered to consider the anticompetitive impact of the merger and conditions which may be imposed to mitigate such impact.

4. United Mine Workers of America, International Union, et al.

On November 2, 1987, a motion to intervene and request for hearing was filed jointly by the United Mine Workers of America, International Union (United Mine Workers); Environmental Action; Salt Lake Citizens Congress; and Salt Lake Area Community Action

---

8/ NRECA is a not-for-profit national service organization with a membership of approximately 1,000 rural electric systems. APPA is a national service organization of more than 1,750 local, publicly owned electric utilities nationwide. The six regional associations are: the Mid-West Electric Consumers Association, Inc.; the Great Lakes Electric Consumers Association; the Northwest Public Power Association; the Southwestern Power Association; the Southeastern Power Resources Committee; and the Idaho Cooperative Utilities Association.

Program (collectively referred to as the United Mine Workers, et al.). 9/

The United Mine Workers, et al. assert that due to the complexity of the issues and the vagueness of the applicant's filing, it is not clear whether the proposed merger is consistent with the public interest. They argue that the proposal raises the possibility of harm to electric consumers in various areas, as set forth below.

The United Mine Workers, et al. express concern that the proposed merger could result in rate discrimination among the customer classes. It is unclear, they assert, how rates within a particular customer class will be determined following the merger. They question whether PP&L's rates, presently lower than UP&L's, will rise to reflect higher system cost. Citing the proposed 2% reduction in UP&L's retail rates for firm customers in Utah, Wyoming and Idaho, the United Mine Workers, et al. question why only those customers will receive this rate decrease. The United Mine Workers, et al. also express concern as to where the loss of revenue resulting from this decrease will be made up.

9/ The United Mine Workers states that it represents 270,000 workers throughout the United States and Canada, including workers in Utah, Wyoming, Montana, Colorado, Arizona, and New Mexico and that United Mine Workers members work in coal mines owned or operated in whole or in part by UP&L or Pacificorp Maine. Environmental Action is a non-profit research and education organization. Environmental Action states that its major work concerns energy policy, toxic waste and solid waste and that its members include ratepayers of UP&L and PP&L. Salt Lake Citizens Congress describes itself as a non-profit corporation that promotes the general welfare of low-income neighborhoods by creating an organizational structure to deal with their common concerns and develop their skills. Salt Lake Citizens Congress states that its constituents are retail customers of UP&L, and that it has represented their interests in retail rate proceedings before the Utah Public Service Commission (Utah Commission). Similarly, Salt Lake Area Community Action Program describes itself as a private, non-profit community-based organization that addresses the needs of low-income people through service delivery and advocacy and has also represented the interests of residential electric customers in retail rate proceedings before the Utah Commission.

In this regard, the United Mine Workers, et al. allege that the Applicants intend to rely on wholesale sales in order to pay for the promised rate reductions. They assert that: (1) this reliance on wholesale sales could be misplaced in the event of increased wholesale competition; (2) as a result, retail ratepayers, including industries seeking to locate in UP&L's service territory, will be unable to predict future rate levels; and (3) the proposed linkage between PacifiCorp Maine's wholesale sales and retail rates may lead to unstable or discriminatory rates.

The United Mine Workers, et al. assert that the proposed merger raises certain questions regarding the effect on competition. First, they argue that undetected predatory pricing may result from the vast resources and lack of corporate boundaries of PacifiCorp Oregon, precluding easily traceable inter-affiliate transactions.

Second, they assert that PacifiCorp Oregon will have the incentive and the ability to discourage effective and competitive small power production by: (1) purchasing from affiliated qualifying facilities (QFs) before contracting with unaffiliated QFs; 10/ (2) imposing severe reliability standards on unaffiliated QFs, or other contract terms not required of affiliated QFs; and (3) furnishing design and engineering assistance to its affiliates at bargain prices, while denying such assistance to unaffiliated QFs.

Third, they argue that because of the size of the transmission network over which PacifiCorp Oregon would have control, the Commission must inquire into whether UP&L's and PP&L's current transmission practices are competitive, and whether and how these practices may change after the merger.

Citing the diversified structure of PacifiCorp Maine, the United Mine Workers, et al. assert that the Commission must consider: (1) whether the public interest is served by subjecting UP&L's ratepayers to the risks of diversification; (2) whether adequate safeguards exist to insulate ratepayers from non-utility losses, and whether the risk of such losses can increase the cost of capital required for utility construction and maintenance; and (3) whether tracking mechanisms exist to determine whether utility resources are being diverted for use by the non-utility sectors of PacifiCorp Oregon.

10/ The United Mine Workers, et al. argue that since a utility's avoided costs diminish as it contracts with additional QFs, this tactic would assign the highest avoided cost payments to affiliated QFs at the expense of unaffiliated QFs.

The United Mine Workers, et al. argue that the merger could interfere with the ability of state commissions to regulate the resulting company in connection with the allocation of the merged power system's total costs among its various consumers. They also argue that state commission prudence reviews may be hampered if post-merger corporate policy requires UP&L and PP&L to use power supplies controlled by one another, while cheaper power sources may be available elsewhere.

Finally, the United Mine Workers, et al. assert that the proposed merger could lead to inefficient use of resources by: (1) moving away from the integrated public utility concept of PUHCA; (2) favoring costly, in-house production of power over more efficient methods; and (3) distancing management from the affected communities, thereby leading to unnecessary economic disruptions.

3. Utah Associated Municipal Power Systems, et al.

On November 2, 1987, the Utah Associated Municipal Power Systems (UAMPS) and Washington City, Utah (Washington City) filed a joint conditional protest, motion to intervene and motion for establishment of hearing procedures.

UAMPS membership includes 27 community-owned power systems in Utah, serving approximately 15% of Utah's population. Each power system is located on and served through UP&L's transmission system. Washington City describes itself as a potential member of UAMPS. UAMPS states that it has undertaken to serve as Washington City's agent for scheduling and billing.

UAMPS and Washington City request: (1) that the application for approval of the merger be set for hearing to resolve issues relating to the merger's effect on competition and access to interconnected wheeling pathways by competitors of the post-merger corporation; and (2) that the Commission condition its approval of the proposed merger on adequate provision for post-merger interconnected wheeling access by UAMPS and Washington City.

UAMPS and Washington City state that their interest in this proceeding is the preservation of competition in the electric power market through necessary and sufficient access to interconnected wheeling service by the post-merger UP&L. They argue that statements made by the Applicants and the historical pattern of restrictions and denials respecting interconnected wheeling service by UP&L, demonstrate that UP&L's northern interconnections will be unavailable to competitors as a result of the merger.

In support of this conclusion, UAMPS and Washington City refer to: (1) statements of the Applicants indicating that the

merger is motivated by a desire to strengthen UP&L's and PP&L's competitive situation; (2) a position statement of the Attorney General of the State of Utah, filed in Utah Commission Docket Nos. 85-2011-01 and 85-99-08, stating that UP&L's wheeling policy is that UP&L will not wheel power to any of its customers; and (3) UP&L's alleged refusal, due to the proposed merger, to provide to Washington City wheeling services to which UP&L had allegedly agreed previously.

UAMPS and Washington City state that while they do not request disapproval of the proposed merger at this time, they protest the merger insofar as it will have the effect of limiting access to wheeling and restricting actual and potential competition between UP&L and themselves. Accordingly, UAMPS and Washington City request that approval of the merger be conditioned on enforceable provisions for access to interconnected wheeling.

Finally, UAMPS and Washington City request that this matter be set for hearing in order to determine the wheeling conditions that should appropriately be imposed to protect the interests of themselves and Applicants.

6. Public Power Council

On October 30, 1987, a motion to intervene was filed by the Public Power Council. 11/ The Public Power Council states that it has not yet determined what its exact position will be in the instant proceeding, but it intends to address the issue of how the merger may effect the "Average System Cost" (ASC) established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, 15 U.S.C. §§ 839 et seq. (1982), which in turn may effect the Priority Firm rate charged to Bonneville Power Administration's preference customers.

The Public Power Council states that it is also concerned with the potential effects of the merger on bulk power sales in the West, including potential changes in the competitive market, altered conditions within the Western States Coordinating Council, and the resulting impact on Bonneville Power Association revenues.

7. Idaho Power Company, et al.

On November 2, 1987, Idaho Power Company (Idaho Power) and Montana Power Company (Montana Power) filed a motion to intervene

---

11/ The Public Power Council consists of 114 publicly or cooperatively-owned electric utilities in the Pacific Northwest, all of which are preference customers of the Bonneville Power Administration.

and request for hearing. The companies describe themselves as competitors of UP&L and PP&L for wholesale sales of power in the southwestern United States.

Idaho Power and Montana Power express concerns similar to those of other intervenors in regard to access to the transmission system to be controlled by PacifiCorp Oregon, and the effect on competition if such access is unavailable.

Idaho Power is separately concerned about the effect of the merger on the use and operation of transmission facilities on the systems of Idaho Power, PP&L, and UP&L. Idaho Power seeks assurance that following the merger, PacifiCorp Oregon will not transfer power and energy between PP&L's system and UP&L's system in such manner as to adversely affect Idaho Power's use of its own transmission system or so as to use Idaho Power's transmission system without compensating Idaho Power for such use.

While they do not oppose the merger of UP&L and PacifiCorp Maine, Idaho Power and Montana Power request that approval of the merger be conditioned so as to mitigate the affects described above.

8. Arizona Public Service Company

On November 2, 1987, the Arizona Public Service Company (Arizona PSC) filed a motion to intervene. The Arizona PSC states that the proposed merger could affect its ability to compete for sales to California of excess power at wholesale. The Arizona PSC also seeks to insure that its future efforts to secure transmission access to the Northwest will not be thwarted as a result of the merger.

While the Arizona PSC states that at this time it is unable to determine the full impact of the proposed merger, it desires to protect and monitor its interests at any hearing that may be ordered.

9. Southern California Edison Company

On November 2, 1987, Southern California Edison Company (Edison) filed a motion to intervene. Citing the potential effect of the proposed merger on its ability to receive or transmit energy from or to utilities in the Northwest, Edison requests that it be permitted to participate in this proceeding.

10. San Diego Gas & Electric Company

On November 2, 1987, San Diego Gas & Electric Company (SDG&E) filed a motion to intervene. SDG&E states that it is a buyer of substantial amounts of electric power and energy and

relies upon the bulk power markets in the West to assure that a portion of its resource needs are satisfied. Citing the potential effect of the proposed merger on the bulk power markets, SDG&E requests that it be permitted to participate in this proceeding.

11. Pacific Gas and Electric Company

On November 2, 1987, Pacific Gas and Electric Company (PG&E) filed a motion to intervene. PG&E states that due to its interconnection and exchanges of electric power with PP&L, it has interests which may be directly affected by the proposed merger. While not requesting a hearing, PG&E requests that it be permitted to participate in the event a hearing is held.

12. Sierra Pacific Power Company

On November 2, 1987, Sierra Pacific Power Company (Sierra) filed a motion to intervene. Asserting that it purchases a substantial amount of power and energy from UP&L for resale, Sierra requests that it be permitted to intervene in this proceeding in order to protect its interests.

13. Washington Water Power Company

On November 2, 1987, Washington Water Power Company filed a motion to intervene. While not raising any specific substantive issues, Washington Water Power Company asserts that hearings concerning the proposed merger may involve issues concerning the transmission, purchase and sale of electric power in which it has a substantial interest as a customer and potential competitor. Accordingly, Washington Water Power Company requests that it be permitted to intervene.

14. Citizens Energy Corporation

On November 2, 1987, Citizens Energy Corporation (Citizens) 12/ filed a motion to intervene, protest and request for hearing. Asserting that it is a potential competitor of UP&L and PP&L, and that the proposed merger could adversely effect competition, Citizens requests that the matter be set for hearing.

12/ Citizens describes itself as a nonprofit corporation that provides the benefits of low cost energy, including electricity, to poor and elderly consumers. Citizens states that it engages in commercial transactions involving the purchase and sale of electricity.

15. South Dakota Public Utilities Commission

On October 21, 1987, the South Dakota Public Utilities Commission (South Dakota Commission) filed a notice of intervention raising no substantive issues.

16. Montana Public Service Commission

On October 19, 1987, the Montana Public Service Commission (Montana Commission) filed a notice of intervention raising no substantive issues.

17. Public Utilities Commission of the State of California

On November 2, 1987, the Public Utilities Commission of the State of California (California Commission) filed a notice of intervention raising no substantive issues.

18. Utah Division of Public Utilities

On November 2, 1987, the Utah Division of Public Utilities 11/ filed a motion to intervene raising no substantive issues.

19. Nucor Steel

On November 2, 1987, Nucor Steel, a Division of Nucor Corporation (Nucor), filed a motion to intervene. Nucor describes itself as one of UP&L's largest retail customers. Nucor expresses concern that the proposed merger will result in it paying higher and unduly discriminatory rates and may have a negative impact on the reliability of service.

Nucor requests a hearing for the purpose of fully developing the facts and issues raised in Applicants' request for approval of the proposed merger.

20. Amax Magnesium Corporation

On November 12, 1987, Amax Magnesium Corporation (Amax) filed an untimely motion to intervene. Amax states that it has negotiated a special contract rate directly with UP&L for the purchase of substantial quantities of electrical power. Amax asserts that the proposed merger could result in a significant increase in its cost of power under the contract, a shift in its

---

11/ The Utah Division of Public Utilities states that it is an agency of the State of Utah charged with the duty to represent the overall public interest in public utility proceedings before the Utah Commission, the courts and Federal and state agencies.

scheduled priority, and a change in how the contract is administered.

Amax requests leave to file its untimely motion to intervene, stating that its counsel received on November 9, 1987, certain supplemental testimony filed by the Applicants in proceedings before the Utah Commission. Amax states that after reviewing this testimony, it became aware of the validity of its concerns, and thereafter acted expeditiously to file its motion to intervene.

21. Utility Shareholders Association of Utah

On November 10, the Utility Shareholders Association of Utah (Shareholders Association) 14/ filed an untimely motion to intervene. While not raising any substantive issues, the Shareholders Association requests leave to file its untimely motion. The Shareholders Association states that it initially intended to participate only in the proceedings before the Utah Commission with respect to the proposed merger. However, the Shareholders Association states that after reviewing CREDA's motion to intervene, it determined that it is necessary to intervene in this proceeding so that it may represent its members, and counter the claims made by other parties in respect to the potential affect on shareholders.

UP&L's Responsive Pleadings

On November 17, 1987, UP&L filed six separate pleadings in response to certain protests and motions to intervene.

First, UP&L moves to strike certain portions of the protests filed by CREDA and UAMPS, et al. UP&L argues that the allegations contained in those protests concerning the position statement of the Attorney General of the State of Utah are inappropriate and prejudicial. UP&L asserts that the position statement is not germane, and is included merely to prejudice the Commission and to force the relitigation of issues already determined before the Utah Commission. UP&L requests that the Commission strike the references to the position statement (as well as the attachments containing the position statement itself), and that the request for a hearing as to the allegations made concerning the position statement be denied.

Second, UP&L objects to the protest and motion to intervene of NRECA, et al., and moves to strike certain portions of that

---

14/ The Shareholders Association describes itself as a nonprofit corporation consisting of approximately 21,000 shareholders of two major utilities in the State of Utah, including UP&L.

pleading. UP&L argues that NRECA, et al. have not met the requirements of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1987), in that most of the members of NRECA, et al. are neither customers nor competitors of UP&L. Those members that are customers of theirs, UP&L asserts, are also members of CREDA, which is already represented by counsel in this proceeding.

UP&L moves to strike the portion of the protest of NRECA, et al. that discusses the initial decision in Utah Power & Light Company, 38 FERC ¶ 63,038 (1987), asserting that such discussion is an improper attempt to relitigate issues already litigated in another docket, and which are presently pending before the Commission for review. 15/ UP&L also moves to strike references to the position statement of the Attorney General of the State of Utah for the same reasons set forth above.

Third, UP&L objects to the motions to intervene and requests for hearing filed by Citizens, Nucor, the Public Power Council, and the United Mine Workers, et al. UP&L asserts that Citizens is merely a potential competitor, and is not entitled to be accorded intervenor status under Rule 214. UP&L argues that because Nucor's basis for seeking intervention is solely designed to protect the retail rates charged to Nucor, it has not stated a sufficient interest that would allow it to intervene or would require the Commission to hold a hearing. UP&L states that the Public Power Council has not shown that it will be directly affected by the outcome of this proceeding, and its interest is too speculative to be accorded intervenor status. Finally, UP&L states that the United Mine Workers, et al. are concerned with retail rates and other local concerns that are within the jurisdiction of the Utah Commission, and their only recourse, therefore, is with that commission.

Fourth, UP&L objects to the untimely motion to intervene of Amax. UP&L argues that because Amax is solely concerned with the potential adverse impact of the merger on retail rates and on its contract with UP&L, its only recourse is with the Utah Commission.

Fifth, UP&L moves for an expedited proceeding, and for leave to answer the protests filed by the intervenors. While Rule 213 of the Commission's Rules of Practice and Procedure 16/ does not permit an answer to a protest, UP&L asserts that an answer at this time will aid the Commission in clarifying the issues involved in this proceeding.

15/ NRECA, et al. cite this case in support of their assertion that UP&L has a history of anticompetitive behavior.

16/ 18 C.F.R. § 385.213(a)(2) (1987).

UP&L also requests that, because the merger agreement provides that the merger must be consummated on or before August 12, 1988, the Commission establish an expedited proceeding schedule.

Sixth, UP&L submitted an answer to certain protests which it wishes to file notwithstanding Rule 213. UP&L's answer takes issue with certain facts and conclusions set forth in the protests of various intervenors, particularly concerning UP&L's alleged anticompetitive conduct (including refusals to wheel power). In its answer, UP&L also disputes the assertion that the Commission has the authority to condition approval of the merger by requiring open transmission access. Finally, UP&L asserts in its answer that the impact of the merger on retail rates is an issue within the exclusive jurisdiction of the state commissions, and it would therefore be inappropriate to hold hearings on that issue in this proceeding.

On November 24, 1987, Nucor filed a response to UP&L's objections, asserting that it warrants intervenor status due to its interest in the impact of the proposed merger on retail rates.

On December 1, 1987, the United Mine Workers, et al. filed a response to UP&L's objections, asserting that as customers of UP&L or PP&L, they are entitled to intervenor status. They also argue that as employees of the Applicants, and as residents of communities served by the applicants, they have an interest in those issues raised in this proceeding which bear on the public interest and involve more than retail rate issues. The United Mine Workers, et al. also assert that the objections filed by UP&L merely serve to confirm the need for a hearing.

On December 2, 1987, CREDA filed an answer to UP&L's motion to permit answers to protests and motion for an expedited proceeding, together with a separate answer to UP&L's motion to strike and motion to deny hearing.

CREDA argues that factual questions are involved in this proceeding that are not susceptible to resolution on the basis of the pleadings. Similarly, CREDA asserts that UP&L's proposed answer is a collection of arguments and conclusory statements, and will not aid the Commission in sorting out what UP&L characterizes as erroneous facts and matters of speculation. The deadline of August 12, 1988, argues CREDA, is a date arbitrarily chosen by the Applicants, and UP&L has submitted no independent circumstances which necessitate consummation of the merger by that date. Accordingly, CREDA requests that UP&L's motion to permit answers to protests and for expedited proceeding be denied.

CREDA argues that references in its protest to the position statement of the Attorney General of the State of Utah are appropriate. CREDA states that it used the position statement for the limited purpose of supporting CREDA's position with respect to the merger, and not as an attempt to relitigate issues that have already been litigated in another forum. CREDA requests that UP&L's motion to strike be denied.

On December 2, 1987, Deseret filed an answer to UP&L's motion to permit answers, motion for an expedited hearing, and to UP&L's request that a hearing be denied. Deseret argues that UP&L's proposed answer does not serve to resolve the factual issues raised in this proceeding, nor does it eliminate the need for a hearing. Deseret argues, therefore, that UP&L's motion to permit answers to protests and request to deny a hearing should both be denied. Deseret also argues that the time frame set by the Commission in this proceeding should not be dictated by deadlines agreed to among the Applicants. Any expedition of this proceeding, they assert, should be in the context of a full evidentiary hearing.

On December 2, 1987, NRECA, et al. filed an answer to UP&L's objection and motion to strike. They argue that many of their members are both customers and competitors of UP&L or PP&L, and are not represented by any other party to this proceeding. They argue, therefore, that they should be accorded intervenor status. NRECA, et al. also assert that the inclusion in their protest of references to the position statement of the Utah Attorney General and to the Initial Decision in Utah Power & Light, 38 FERC ¶ 63,038 (1987), is not an attempt to introduce evidence or influence the Commission with respect to a pending case, but rather an attempt to alert the Commission to questions that have been raised with respect to UP&L and that a hearing is necessary. Accordingly, they argue, UP&L's motion to strike should be denied.

On December 2, 1987, UAMPS and Washington City filed an answer to certain of the motions filed by UP&L. Although not opposing UP&L's motion to permit answers, they argue that UP&L's proposed answer does not resolve the many triable issues presented by the proposed merger, and therefore does not lessen the need for a hearing.

UAMPS and Washington City also argue that conditioning approval of the merger on wheeling access is an appropriate exercise of the Commission's authority under section 203 of the FPA. They assert that since the Commission has the authority to deny approval of the merger, it follows that the Commission must be able to take the less restrictive step of conditioning its approval and that Commission precedent does not preclude conditioning approval on wheeling access. None of the cases cited as precedent by UP&L, they argue, dealt with the

Commission's authority to condition approval of a proposed merger on wheeling access to lessen the potential anticompetitive effect of that merger, and are inapplicable to the instant proceeding.

UAMPS and Washington City assert that even if the Commission lacks the authority to condition approval of the merger on wheeling access, it should nonetheless receive evidence on the effect of the merger on wheeling in the context of the effect on competition.

UAMPS and Washington City assert that UP&L's motion for an expedited proceeding should be denied, arguing that the issues raised require an evidentiary hearing. They assert that the provision in the merger agreement requiring consummation of the merger by August 12, 1988 is simply a date that the Applicants placed in their contract. They further argue that UP&L's assertion that an expedited proceeding is necessary so that the public interest benefits of the merger will not be delayed, assumes that the merger will, in fact, be in the public interest.

Finally, UAMPS and Washington City assert that UP&L's motion to strike should be denied for the same reasons set forth in the answer to the motion to strike of NRECA, et al.

On December 2, 1987, the Public Power Council filed a response to UP&L's objections. The Public Power Council argues that the Commission cannot make a determination of whether the merger is consistent with the public interest without conducting a hearing, and that the Public Power Council should be granted intervenor status since its members will be directly affected by the merger.

Discussion

The Notices and Motions to Intervene

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (1987)), the timely, unopposed notices and motions to intervene serve to make CREDA, Deseret, UAMPS, Idaho Power, Montana Power, the Arizona PSC, Edison, SDG&E, PG&E, Sierra, Washington Water Power Company, the South Dakota Commission, the Montana Commission, the California Commission and the Utah Division of Public Utilities parties to this proceeding.

NRECA, et al., as wholesale customers of both UP&L and PP&L, have a direct interest in the outcome of this proceeding. We note that although UP&L alleges that there is some overlap in the membership of CREDA and NRECA, et al., CREDA's membership does not include the numerous public power and rural electric cooperative systems located in the Pacific Northwest that are represented by NRECA, et al. Accordingly, we shall grant the

motion to intervene of NRECA, et al., notwithstanding UP&L's opposition.

Citizens, as a purchaser and seller of electric energy in competition with UP&L and PP&L, has a direct interest in the outcome of this proceeding, and will be afforded intervenor status. Nucor, as one of the largest retail consumers of UP&L, also has a direct interest in the outcome of this proceeding. Although UP&L asserts that the effect of the proposed merger on retail rates is within the exclusive jurisdiction of the state commissions, in Commonwealth Edison Company, et al., 36 FPC 927, 938 (1966), aff'd sub nom. Utility Users League v. FPC, 394 F.2d 16 (7th Cir. 1968), cert. denied, 393 U.S. 953 (1968) (Commonwealth), the Commission stated that "we believe it is our responsibility under the Federal Power Act in determining whether a merger is consistent with the public interest to consider what effect the merger would have on rate levels or on state regulation of retail rate design." For the same reason, UP&L's objection to the motions to intervene of the United Mine Workers, et al. and Amax is unfounded. 17/ Accordingly, we find that good cause exists to grant the motions to intervene of Citizens, Nucor, the United Mine Workers, et al. and Amax.

UP&L objects to the motion to intervene of the Public Power Council based on what it terms the Public Power Council's speculative interest in these proceedings. However, we note that the Public Power Council's members, all of which are preference customers of Bonneville Power Administration, may be directly affected by proposed merger to the extent that it ultimately results in a change in the Priority firm rate set by Bonneville Power Administration and charged to its preference customers. Accordingly, we shall grant Public Power Council's motion to intervene.

Finally, we find that the Shareholders Association, whose membership includes shareholders of UP&L, has a direct interest in the outcome of this proceeding. Given the relatively short delay in the filing of the motion to intervene and the early stage of this proceeding, granting the motion should result in no undue prejudice or delay. Accordingly, we find that good cause exists to grant the Shareholders Association's untimely, unopposed motion to intervene.

UP[illegible] Motion to Permit Answers to Protests and for Exp[illegible]ted Proceeding

---

17/ We also note that given the relatively short delay by Amax in the filing of its untimely motion to intervene and the early stage of this proceeding, granting the motion should result in no undue prejudice or delay.

As noted, UP&L requests leave to file an answer to certain protests, and has submitted its proposed answer. With two notable exceptions, the answer addresses the allegations made by the intervenors by disputing the accuracy of the facts set forth in support of those allegations, or by disputing the conclusions drawn by the intervenors. Indicative of this are the following responses contained in UP&L's answer: (1) UP&L disputes the allegation by CREDA that the Utah Commission denied UP&L the right to construct a high-voltage transmission line to the Utah-Nevada border; (2) UP&L disputes CREDA's allegation that UP&L frustrated negotiations between certain southern Utah cities and CP National Corporation in connection with the purchase of CP National Corporation's system; (3) UP&L disputes CREDA's representation as to UP&L's refusal to provide transmission services to Washington City; (4) UP&L disputes Montana Power's claim that it had an agreement with UP&L which UP&L refused to sign after the merger was announced; and (5) UP&L disputes UAMPS' allegation that UP&L has denied others access to its essential facilities except when it has been forced to provide wheeling by regulators.

Primarily, UP&L's answer is a response to factual allegations raised in the protests. We find that it would be inappropriate to attempt to resolve these questions of fact at this time. See, also 18 C.F.R. § 385.211(a)(4) (1987). Accordingly, to the extent that the answer addresses questions of fact, it shall be disregarded.

However, as noted, the answer raises two legal issues. First, UP&L argues that the Commission lacks the authority to condition approval of the merger by requiring access to the merged companies' transmission system. Second, UP&L asserts that the impact of the merger on retail rates is an issue within the exclusive jurisdiction of the state commission, and it would be inappropriate to hold hearings on that issue in this proceeding. We believe that it is in the interest of all concerned that these two issues be addressed. Accordingly, we shall grant UP&L's motion for leave to file an answer to the extent that the answer addresses these two issues.

As to the first issue, the Commission has the authority under section 203 of the FPA to grant an application for approval of a merger "upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission." 16 U.S.C. § 824b(b) (1982). While we make no determination at this time as to whether conditions to approval of the merger will be necessary or appropriate, we shall set for hearing the issue of what conditions, if any, may be necessary or appropriate in the instant proceeding.

As to the second issue, we have already stated that the Commission's authority to evaluate the proposed merger extends to its effect on retail rate levels or on state regulation of retail rate design. 36 FPC at 938. We have considered the arguments made by UP&L, and find no support for its assertion that the effect on retail rates is within the exclusive jurisdiction of the affected state commissions. Commonwealth Edison Company, 36 FERC ¶ 61,390 (1986), cited as authority by UP&L, involved an application for a rate decrease for certain full requirements wholesale customers. It has no application to the instant proceeding. Accordingly, the Commission intends to address the effect of the proposed merger on retail rates to the extent set forth below.

With regard to UP&L's request for an expedited proceeding, this request will be granted as set forth below.

UP&L's Motions to Strike

UP&L moves to strike material contained in certain protests which it finds objectionable and prejudicial. However, Rule 211(a)(4) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211(a)(4) (1987), provides that if a proceeding is set for hearing, protests are not part of the record upon which the decision is to be made. Because we will set this matter for hearing, the presiding administrative law judge will rule on the merits of UP&L's objections, assuming, of course, that the objected to documents or analyses are offered into evidence. Accordingly, UP&L's motions to strike will be denied without prejudice to UP&L's right to renew its objections at hearing.

The Statutory Standard

Pursuant to section 203(a) of the Federal Power Act, a public utility must obtain the approval of the Commission before merging or consolidating jurisdictional facilities. The merger is to be approved if the Commission finds that it "will be consistent with the public interest." 16 U.S.C. § 824b(a) (1982). As noted above, section 203(b) provides that "[t]he Commission may grant any application . . . upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and proper coordination in the public interest of facilities subject to the jurisdiction of the Commission." 16 U.S.C. § 824b(b) (1982).

In evaluating a merger application, the Applicants need not show that a positive benefit to the public will result. Pacific Power & Light Co. v. F.P.C., 111 F.2d 1014, 1017 (9th Cir. 1940). Rather, Applicants are required to fully disclose all material facts and carry the burden of showing affirmatively that the merger is consistent with the public interest. Id.

In Commonwealth, the Commission stated that merger proposals, in addition to being analyzed for their consistency with the Federal Power Act, must also be viewed within the broad context of the Public Utility Act of 1935, Title I of which constitutes PUHCA. 18/ 36 FPC at 931. "As part of this analysis, it is appropriate to inquire into the extent to which the operation of the merged facility will be consistent with the 'integrated public utility' concept of Section 2(a)(29)(A) of the Public Utility Holding Company Act of 1935, as well as with the standards established under Sections 10 and 11 of that Act." 36 FPC at 932. In light of these considerations, the Commission set forth the following non-exclusive list of factors to be considered when evaluating whether a proposed merger is in the public interest:

> (1) the effect of the proposed action on the Applicants' operating costs and rate levels;
>
> (2) the contemplated accounting treatment;
>
> (3) the reasonableness of the purchase price;
>
> (4) whether the acquiring utility has coerced the to-be-acquired utility into acceptance of the merger; 19/
>
> (5) the effect the proposed merger may have on the existing competitive situation; and
>
> (6) whether the consolidation will impair effective regulation either by this Commission or the appropriate state regulatory authority.

36 FPC at 932.

18/ 15 U.S.C. §§ 79-79z-6 (1983).

19/ In evaluating whether the merger agreement was the result of coercion, the Commission, in Commonwealth, examined whether the acquiring company deprived the other entity of the opportunity to retain its independence through joint participation with it in the planning and construction of new facilities, or of the opportunity to purchase power at a reasonable rate, or unfairly refused to share reserves. 36 FPC at 940. We note that we do not believe in this regard that the so-called "friendly" or "hostile" nature of a merger is relevant to this analysis.

Several of the parties suggest that the Commission must apply the substantive standards set forth in PUHCA in determining whether a merger satisfies the public interest standard under section 203 of the FPA. We disagree. As we stated in Commonwealth, and reaffirmed in Iowa Power and Light Company, et al., 44 FPC 1640 (1970), reh'g granted on other grounds, 45 FPC 1151 (1971):

> [t]he requirements of Part I of the Public Utility Holding Company Act are, of course, not binding upon this Commission in determining what is consistent with the public interest within the meaning of section 203 of the Federal Power Act and the policies prescribed by the SEC for dealing with holding companies are not necessarily applicable to the same degree in dealing with operating companies.

36 FPC at 942-43, see Iowa Power and Light at 1643. Rather, we must focus on the congressional policies underlying both PUHCA and the FPA. Western Light & Telephone Company, 33 FPC 1147, 1149 (1965). In affirming the Commission's order in Commonwealth, the Court of Appeals stated that "[t]he Commission properly recognized that the standards of the Holding Company Act, though not directly applicable, were pertinent. . . ." Utility Users League v. FPC, 394 F.2d 16, 21 (7th Cir. 1968), cert. denied, 393 U.S. 953 (1968).

For these reasons, we need not strictly apply the provisions of PUHCA, as advocated by certain intervenors. The factors set forth by the Commission in Commonwealth to be applied in determining whether a merger is consistent with the public interest were derived after giving due regard to the Congressional concerns underlying enactment of PUHCA and Part II of the FPA. 36 FPC at 931-2; see also Iowa Power and Light Company, et al., Id. Our focus must be on the impact on the public interest of the merged entity's operation.

Therefore, in setting this matter for hearing, as discussed below, we will permit the parties to address the issue of whether the merged companies will be capable of being operated economically and efficiently as a single entity. We will also set for hearing the issue of the impact on the public interest of the merged entity not operating as a single entity to the extent such is found to be the case. However, while the integrated operation of the merged entity is pertinent to our evaluation of the public interest under section 203 of the FPA, we need not, and will not set for hearing the issue of whether the proposed merger is in compliance with the integrated public utility concept under PUHCA, or with each of the other provisions contained in PUHCA

With respect to the effect of the proposed merger on the existing and future competitive situation, the Commission stated that:

> . . . a merger requires consideration of at least three different questions: (1) will the merger bring a significant added concentration of economic power?; (2) will it eliminate any meaningful competition which may exist, either directly or by example, in attracting new industries to their respective service areas, in making wholesale sales, or in providing economical service? (3) will it have an adverse effect on competing energy sources?

36 FPC at 941.

The Need for a Hearing

In the order setting the Commonwealth merger application for hearing, the Commission stated that "the public interest will generally be best served by setting for hearing all applications requesting approval of the merger and consolidation of two or more Class A electric utilities." Commonwealth Edison Company, et al., 35 FPC at 877 (1966). However, in Southwestern Public Service Company, et al., 23 FERC ¶ 61,153 (1983), we stated that "we do not believe that a hearing is necessary where the receipt of evidence will not aid the Commission in reaching an ultimate decision. Denver Stock Yard Co. v. Producers Livestock Marketing Ass'n, 356 U.S. 282, 287 (1958); City of Lafayette v. SEC, 454 F.2. 941, 953 (D.C. Cir. 1971) affirmed sub nom. Gulf States Utilities Co. v. F.P.C., 411 U.S. 747 (1973)." 23 FERC at 61,338.

The instant proceeding presents certain issues, the resolution of which we find requires a hearing, while others do not require receipt of evidence to aid the Commission in reaching an ultimate determination on the merger application. The Commission intends to act expeditiously in reaching a final determination, so that any benefits that may accrue as a result of the merger, if approved, will not be unduly delayed. Only the issues set forth below shall be set for hearing. Moreover, we will direct the presiding administrative law judge to issue an initial decision on the issues described below no later than June 1, 1988. To this end, we will direct that a prehearing conference be held within ten days of this order, and that the joint applicants file their case in chief by January 8, 1988. All other procedural dates will be left to the discretion of the presiding administrative law judge.

We note that many of the intervenors have raised common issues. In view of the schedule that we are setting, we direct the presiding judge to take appropriate steps to avoid

duplication of evidence and cross-examination. We also encourage the parties with the same or similar interests and goals to join together in presenting evidence and in cross-examining witnesses.

The Effect on Rates

While various concerns have been raised in connection with the effect of the merger on rates, these have primarily been stated in general terms and primarily in the context of the effect on the competitive situation, which we will address separately. The effect of the proposed merger on the Applicants' overall operating costs, such as production and administrative costs, has not been addressed directly by any party. Moreover, the Applicants have not submitted any specific information disclosing how the companies will operate following the merger. Accordingly, we will require that the Applicants submit, as part of their case in chief, data comparing the operating costs of both companies following the merger to the present costs of each company, as well as whether the Applicants intend to file future wholesale rates on a consolidated or divisional basis. The intervenors will then be afforded an opportunity to respond. Where appropriate, such responses should include the effect of the proposed merger on the operating costs of other entities in the region.

The other issue regarding rates that needs to be addressed at hearing is the concern raised by the Public Power Council regarding the extent to which the proposed merger may effect the determination of rates set by Bonneville Power Administration in the Pacific Northwest. Accordingly, we will direct that this issue be addressed by the Applicants in their case in chief.

The Effect on the Competitive Situation

As can be seen by the protests and motions to intervene filed in this proceeding, a primary concern of many of the intervenors is the effect of the proposed merger on competition. In order to evaluate this aspect of the merger, we shall direct that the parties address at hearing the various questions that have arisen in this regard.

The parties will be directed to address whether the proposed merger will tend to create a monopoly in a relevant market. For example, Deseret and others allege that the merger will adversely affect competition by consolidating the extensive transmission systems of the Applicants, resulting in a significant increase in concentration of economic power and control over facilities that are essential to participation in the bulk sales market. Whether, and to what extent, alternative pathways exist from the Pacific Northwest to the Southwestern United States, including California, needs to be addressed. Accordingly, evidence will be required as to whether the merger will result in an increase in

concentration of economic power and in control by PacifiCorp Oregon of essential facilities. This should include evidence concerning the feasibility of making such facilities available to competitors and as to whether they could be practicably duplicated by competitors.

Similarly, evidence will be required as to what are the relevant markets involved. This should include the product and geographic markets in which PacifiCorp Oregon will compete and in which PacifiCorp Maine and UP&L have competed in the past. Barriers to the entry of new competitors into these relevant markets also should be addressed.

The parties will also be directed to address whether the merger is likely to substantially lessen actual or potential competition in a relevant market. Various intervenors assert that PacifiCorp Oregon will be able to foreclose competitors from access to actual or potential competition within their service territory by virtue of its control over the consolidated transmission system. Similarly, concern has been expressed over whether the merged company will have facilities available for transmission of power for its competitors. Whether the merged company will control access to products (such as coal) used to generate electricity and needed by its competitors, is also a concern. Accordingly, these issues need to be addressed at hearing.

CREDA, Deseret, Idaho Power, Montana Power, and others allege that UP&L has engaged in anticompetitive practices in the past, and that the merger will enhance the opportunities and incentive for the merged companies to engage in such behavior in the future. While we agree that the intervenors should be afforded an opportunity to address these questions during the hearing, evidence of past conduct should be limited to conduct relevant to the issues set for hearing. We will leave to the presiding judge the determination of how far in the past examination should be made.

Finally, various conditions to approval of the merger have been suggested by the intervenors to lessen the alleged anti-competitive effect. We will direct the parties to address at hearing the necessity and appropriateness of specific conditions, if any, as well as their feasibility and cost.

Effectiveness of Regulation

The impairment of the effectiveness of regulation as a result of the proposed merger is a concern that has been raised by various intervenors. CREDA, for example, asserts that meaningful regulation by state commissions will be rendered extremely difficult since the merged utility would have operations spread over seven states, with affiliates in three

different industries. The potential for misallocation of costs, abuses such as diversion of funds away from operating purposes, and the impairment of prudence reviews are further examples of concerns raised in this proceeding. These issues raise questions of fact that require evidentiary proceedings. Accordingly, these issues shall be set for hearing.

Issues Not Requiring a Hearing

There is no dispute or need for hearing with regard to three of the factors that Commomwealth suggests we take into consideration in evaluating a merger application.

The Applicants propose to account for the merger by the pooling of interests method. None of the intervenors have challenged the accounting method used by the Applicants. Moreover, our analysis indicates that as applied by the Applicants, this method is in accordance with generally accepted accounting principles and the Uniform System of Accounts. Accordingly, we find that the Applicants' method of accounting for the proposed merger is proper.

There have been no allegations made and no evidence submitted indicating that the merger agreement resulted from anything other than arms-length negotiations. Neither UP&L nor PP&L was in a position to deprive the other of its ability to retain its independance by inhibiting efforts to interconnect or otherwise establish closer relations with nearby utilities. Accordingly, we find that the proposed merger is not the result of coercion.

There has been no showing by any of the intervenors that the purchase price is not reasonable, nor are we aware of any questions of fact that need to be addressed in this regard. Accordingly, we will not set this issue for hearing.

Commission Action

Upon receipt of the initial decision on the issues described above, and [illegible] briefs on and opposing exceptions, and upon review of other matters under section 203 that do not warrant adjudication, the Commission will then act on the application for approval of the merger.

The Commission orders:

(A) The motions to intervene of NRECA, et al., Citizens, Nucor, the United Mine Workers, et al., Amax, and the Shareholders Association are hereby granted for good cause shown.

(B) UP&L's motion to permit answers to protests is hereby granted to the extent set forth in the body of this order.

(C) UP&L's motion for an expedited proceeding is hereby granted to the extent set forth in the body of this order.

(D) UP&L's motions to strike are hereby denied without prejudice to renewal of its objections at hearing.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 203 and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held for the purpose of addressing only those issues set forth in the body of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days after the date of issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure. The presiding administrative law judge is hereby directed to establish a procedural schedule which will permit an initial decision to be issued no later than June 1, 1988.

(G) The Applicants are hereby directed to submit their case in chief no later than January 8, 1988.

(H) The parties are hereby directed to file briefs on exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days of the filing of briefs on exceptions.

By the Commission.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Acting Secretary.